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COMMONWEALTH OF MASSACHUSETTS DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

)
Massachusetts Oilheat Council, Inc. and) D.T.E. 00-57
Massachusetts Alliance for Fair Competition)
)

MOTION TO DISMISS COMPLAINT AND PETITION OF THE MASSACHUSETTS OILHEAT COUNCIL, INC.
AND THE

MASSACHUSETTS ALLIANCE FOR FAIR COMPETITION

Now comes Boston Gas Company ("Boston Gas"), Colonial Gas Company ("Colonial") and Essex Gas Company ("Essex") (together, the "Companies"), pursuant to 220 C.M.R. § 1.06(6)(e), and move to dismiss the complaint and petition of the Massachusetts Oilheat Council and the Massachusetts Alliance for Fair Competition (together, the "Complainants"), filed with the Department of Telecommunications and Energy (the "Department") on June 29, 2000 (the "Complaint/Petition").

The Complaint/Petition is deficient and should be dismissed because: (1) the facts alleged in the Complaint/Petition do not support the claim that the Companies' promotional activities will "impair the competitive marketplace;" (2) the Complainants have failed to provide any reasoned basis to warrant further investigation by the Department of issues relating to ServisEdge Partners, Inc. ("ServisEdge") and the pending merger with KeySpan Corporation ("KeySpan"); and (3) the Complaint fails to identify any statute or regulation that would present an actionable legal claim to the Department, as required by 220 C.M.R. 1.04(1)(b)7.

Accordingly, the Department should dismiss the Complaint/Petition. In support thereof, the Companies state as follows:

1. On June 29, 2000, the Complainants filed the Complaint/Petition with the Department requesting that the Department temporarily suspend implementation of the Companies' Value Plus Installer Program ("VPI Program") until the Department has had the opportunity to investigate and issue a ruling on this complaint/petition.
2. The Complainants request that the Department provide the following nine elements of relief: (1) order the discontinuation of the VPI Program; (2) investigate whether the VPI Program will unduly and unfairly benefit ServisEdge; (3) prohibit the use of preferred contractor lists; (4) direct the Companies to discontinue their Free Equipment Program; (5) direct the Companies to discontinue the cooperative advertising component of the VPI Program; (6) investigate the Companies' pre-merger relationship with Keyspan Energy concerning the VPI Program; (7) if violations are discovered, (1) prohibit the Companies from recovering the costs associated with the VPI Program; (8) require the provision to consumers of a payback analysis; and (9) during the pendency of this complaint, order the Companies to suspend or otherwise cease and desist from implementing its VPI Program.

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3. On July 13, 2000, the Companies filed a letter with the Department indicating that the Complaint/Petition does not state the statutory basis or regulatory provision under which the Department could grant the relief requested. The Companies requested (and received) an extension of the time allowed for filing of a responsive pleading until August 10, 2000.

4. For the reasons set forth in the accompanying Memorandum in Support of Motion to Dismiss (the "Memorandum"), the Companies hereby move the Department to dismiss the Complaint/Petition because it fails to state a claim upon which the requested relief may be granted by the Department (see Memorandum, Section IV).

WHEREFORE, the Companies respectfully request that the Complaint and Petition be dismissed.

Respectfully submitted,

BOSTON GAS COMPANY

COLONIAL GAS COMPANY

ESSEX GAS COMPANY

By their attorney,

Catherine L. Nesser, Esq.

Associate General Counsel

Boston Gas Company

One Beacon Street

Boston, Massachusetts 02109

(617) 723-8400

Dated: August 10, 2000

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1 No reference to the statutory or regulatory basis for such "violations" is provided.